

**Town of Amherst
Zoning Board of Appeals - Special Permit**

DECISION

Applicant: Carol S. Albano
51 Spaulding Street, Amherst, MA

Date application filed with the Town Clerk: April 11, 2007

Nature of request: A Special Permit to convert a single family to a two-family dwelling under Section 3.321 of the Zoning Bylaw

Address: 51 Spaulding Street (Map 14B, Parcel 110, R-G Zoning District)

Legal notice: Published on April 18 and 25, 2007 in the Daily Hampshire Gazette and sent to abutters on April 13, 2007

Board members: Barbara Ford, Ted Rising and Al Woodhull

Submissions: The petitioner submitted the following:

- A Management Plan;
- A sample lease agreement;
- A set of floor plans and elevations, dated February 28, revised May 1, 2007, prepared by Kraus-Fitch Architects, Inc.;
- A site plan with proposed additional landscaping and a lighting plan, dated February 27, 2007, prepared by Jonathan Cohen.

Town staff submitted:

- A memo from the zoning assistant dated 4/27/07 concerning zoning and dimensional requirements;
- A Request for Determination and a Determination of Applicability with special conditions, from the Conservation Commission, dated 9/6/06.
- An email from the Conservation Department dated 4/24/07, stating that the changes Ms. Albano made to her plans from 2006 will not change the impact on the wetlands any more than the Determination dated 9/6/06.

A former neighbor and colleague, Leonard N. Huber, submitted a letter of support for the application, dated May 3, 2007.

Site Visit: September 11, 2006

The Board met with Ms. Albano at the site. They observed the following:

- An older colonial house on a quiet, dead-end street;
- The extensive wetlands in the back yard, and a stream crossing the property just to the north of the house;
- The parking area staked out for 4 cars behind the house (to the east);
- The staked location of the addition on the south-east section (back) of the house;

- The location of the proposed deck off the second floor living room of the proposed second unit, facing east in the back of the house;
- The basement storage under the original section of the house;

Public Hearing: May 3, 2007

For the record, a previous ZBA panel had asked Ms. Albano to withdraw an earlier application because of a conflict of interest of one of the ZBA panel members. Also, that panel had voted unanimously on April 8, 2007 to waive the application fee for Ms. Albano for a new hearing with a different ZBA panel.

Carol Albano represented herself at the hearing. She stated that she has lived at 51 Spaulding Street for 21 years, and wishes to make some changes to the house. She stated the following:

- She has a large single-family house, and wishes to convert the back section into a second apartment;
- A 10' x 32' addition is proposed for the south side of the "L" in the back of the house that will become part of the new dwelling unit;
- She has designed the second unit so that it has one bedroom, a study, an exercise room, a living room, dining room, kitchen and two full bathrooms;
- She used a computer model to lay out 4 parking spaces in the back of the house, and eliminated all parking in the front;
- The property is in the R-G zoning district and meets all the dimensional requirements in terms of setbacks and coverage;
- There are many two-family residences in the neighborhood, condominiums and an apartment building;
- Town wide, 56% of the housing stock is non-owner occupied, many two-family residences are non-owner occupied, and one house along the street was sold as a two-family, non-owner occupied rental. It is now owner occupied though;
- She has three projects going at present, and wants flexibility in the conditions to not require owner-occupancy if a Special Permit is granted;
- She has another property that requires owner occupancy (as a condition of its Special Permit) and she cannot be in two places at once;
- She's had experience as a landlord in many communities, and will choose tenants who will be in keeping with the character with the neighborhood.

Mr. Rising commented that he read her management plan that stated that the house would be owner occupied, and had no problem with the application at that time. But allowing a non-owner occupied residence is a "different kettle of fish", he said. The plan shows 6 bedrooms for the two units (the "study" in the new unit could easily become a bedroom) and 4 parking places. He said that he is concerned that the dwelling could become student housing and/or have an excess of people living there.

Mr. Woodhull stated that a Special Permit for a non-owner occupied dwelling would require more conditions, such as a resident manager registered with the Town, allowing only a limited number of cars on the property, noise restrictions, etc.

The Board Chair asked for comments from the public. Five residents of Spaulding Street spoke and/or wrote letters regarding the proposal.

Len Huber, 95 Mt. Warner Road, Hadley, formerly a neighbor on Spaulding Street, spoke and submitted a two-page letter. He said that he has worked with Ms. Albano as well in a school setting, and found her to be well organized, responsible and communicated well with students. He also is familiar with her management

of her rental property on North East Street, he said, and found her to be good manager, very responsible and a good problem solver.

Rebecca Mitchell, 45 Spaulding Street, said that she had lived on the street for 10 years, and that her house is next door to Ms. Albano. She said that the street is entirely residential, with a lot of families and a lot of kids. She would like the street to remain family oriented. She would not object if the two-family would be owner-occupied. Things would be better taken care of with the owner right there. If full of renters, many problems could result that would impact the neighborhood, she said.

Margaret Burggren, 67 Spaulding Street, an abutter as well, said that she has gone from being supportive of Ms. Albano's application to being alarmed. She would like the condition "owner occupied" placed on the Special Permit if granted. She is concerned that when the property is sold, without the owner-occupied condition the control and sense of responsibility for the neighborhood would be gone.

Lillian Scott, 71 Spaulding Street, said that she lives in one of the condominiums on the street, and all the condos are owner occupied. The condo association has worked hard through the years to curtail the noise and parties that used to occur when the units had rentals. With owner occupancy, the noise level is much better. Ms. Scott also questioned the number of cars that would be on the applicant's property if the units were non-owner occupied. With 6 bedrooms, the potential for 8 or more cars could easily happen.

David Carlson, 34 Spaulding Street, said that he shares the same issues that his neighbors do. His concerns:

- If the property is non-owner occupied, there is the potential for an excessive number of people in two units, given the number of bedrooms;
- The present Management Plan would have to change if not owner-occupied;
- The driveway is too narrow for the increased number cars that could result from non-owner occupation;
- The design of the second unit is difficult to understand; the exercise room could easily become a bedroom, which could create a problem with the second means of egress, which can not be from a bedroom;
- He wants Ms. Albano to stay in the neighborhood. She's been a good neighbor for years, and they raised their children together. The street has often been referred to as the "Amherst Sesame Street", because it's so family friendly and children friendly;
- Sections 10.380 and 10.381 of the Zoning Bylaw require the Board to find that the proposal would be suitably located in the neighborhood and compatible with existing uses. A non-owner occupied dwelling would not conform or be compatible to existing uses on the street.

The applicant responded to Mr. Carlson's comment about the layout of the new unit. She said that she is keeping as many of the existing parts of the house as she can. The layout of the second unit is a little different she admitted, but it will work.

In terms of the non-owner occupation of the house, the applicant said that she had much experience as a landlord and could control any situations that might arise.

Mr. Woodhull commented that if the house were not owner-occupied, the possibility of too many occupants is too great. He's concerned about noise and parking.

Ms. Albano said that she does have some room for overflow parking when guests or her family visits, but the parking will be very limited – 4 spaces.

Mr. Rising made a motion to close the evidentiary portion of the public hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting – Discussion

Ms. Ford asked the Board to consider the submitted Management Plan, which includes that statement that the converted dwelling will be owner occupied. Mr. Woodhull stated that he was very persuaded by the neighbors concerns, and that the neighborhood would be better served by an owner-occupied dwelling. Ms. Ford said that the neighborhood appears to have worked hard to keep its family orientation and a change to non-owner status would upset that balance. Mr. Rising said that he agreed with the owner-occupied clause and the entire Management Plan in general.

It was noted that the “Dimensional Requirements” section added to the end of the Management Plan is incorrect – the calculations were made for a smaller addition when the applicant was planning for a 3-family dwelling.

The trash and recycling barrels will be kept under the deck according to the Management Plan. Ms. Albano said that the deck is not a major means of egress and it is acceptable with Inspection Services.

Mr. Woodhull asked about the lease. Mr. Ford said that the ZBA often asks for a sample lease, but unless the lease is incompatible with the application or is illegal, the Board does not get involved with an applicant’s lease.

The Board then developed a list of conditions under which they would be able to approve the application.

Public Meeting – Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

- 10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other two-family dwellings in the surrounding family-type neighborhood that are owner-occupied.
- 10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the addition is small and in the back of the house. No changes will be visible from the front of the house. The Conservation Commission has imposed some conditions to protect the wetlands adjacent to the proposed parking.
- 10.383, 10.386 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there is parking on site for two units and a turnaround area, one of the conditions required of the permit.
- 10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the building is connected with the town sewer and there are refuse/recycling containers stored in a protected place close to the driveway and listed in the approved Management Plan.
- 10.390 – The proposal ensures protection from flood hazards, erosion control and the impact of the enlarged parking area because the design of the addition and parking are in conformance with the conditions from the Conservation Commission.
- 10.391 - The proposal protects, to the extent feasible, the unique or important natural feature, the wetlands, because the house and addition are elevated enough and far enough away from the wet areas in

- the back the property. Moreover, the ambiance of the proposal is to protect the family nature of the neighborhood.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all exterior lighting will be downcast.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw for the reasons enumerated above, and because it helps to protect the safety and general welfare of the inhabitants of the neighborhood.

Public Meeting – Zoning Board Decision

Mr. Rising MOVED to APPROVE the application with the conditions and findings as drafted in the public meeting. Mr. Woodhull seconded the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, to convert a single family to a two-family dwelling under Section 3.321 of the Zoning Bylaw, at 51 Spaulding Street (Map 14B, Parcel 110, R-G Zoning District), as applied for by Carol S. Albano.

BARBARA FORD

EDWARD RISING

ALBERT WOODHULL

FILED THIS _____ day of _____, 2007 at _____,

in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.

NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to convert a single family to a two-family dwelling under Section 3.321 of the Zoning Bylaw, at 51 Spaulding Street (Map 14B, Parcel 110, R-G Zoning District), as applied for by Carol S. Albano, subject to the following conditions:

1. The property shall be managed according to the Management Plan, modified and approved at the public meeting of the Board on May 3, 2007 and is on file in the Board of Appeals office, Planning Department.
2. One of the two dwelling units shall be owner-occupied.
3. Landscaping and lighting shall be as shown on the plans approved at the public meeting of the Board on May 3, 2007.
4. All exterior lighting shall be downcast and shielded from the neighbors.
5. The dwelling units shall be built according to the plans approved at the public meeting of the Board on May 3, 2007.

BARBARA FORD, Chair
Amherst Zoning Board of Appeals

Date